

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RALPH McCLAIN, et al.
Plaintiff,

v.

BLANCHE CARNEY, et al.
Defendants.

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Case No. 2:23-cv-4012-JDW

ORDER

AND NOW, this 10th day of January, 2024, upon consideration of Plaintiff Ralph McClain's Motion to Proceed *In Forma Pauperis* (ECF No. 3), his Prisoner Trust Fund Account Statement (ECF No. 2), and his *pro se* Complaint (ECF No. 1), and for the reasons set forth in the accompanying Memorandum, it is **ORDERED** as followed.

1. For the reasons and to the extent set forth in the accompanying Memorandum, Mr. McClain's Motion to Proceed *In Forma Pauperis* (ECF No. 3) is **GRANTED** pursuant to 28 U.S.C. § 1915;

2. Mr. McClain, #814451, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of Curran-Fromhold Correctional Facility or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Mr. McClain's inmate account; or (b) the average monthly balance in Mr. McClain's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial

payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Mr. McClain's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Mr. McClain's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court shall send a copy of this Order to the Warden of the Curran-Fromhold Correctional Facility.

4. The Complaint is deemed filed.

5. For the reasons set forth in the accompanying Memorandum, and pursuant to 28 U.S.C. § 1915€(2)(B)(ii), the following claims are **DISMISSED** for failure to state a claim:

a. The claims against Judge Karen Simmons and Judge Monica Gibbs are **DISMISSED WITH PREJUDICE**;

b. All remaining claims against the remaining Defendants are **DISMISSED WITHOUT PREJUDICE except for** Mr. McClain's deliberate indifference claim against Defendants Anthony Carter and Walter Hawkins.

6. On or before February 16, 2024, Mr. McClain may file an amended complaint **only** as to those claims dismissed without prejudice. Any amended complaint must identify all defendants in the caption of the amended complaint in addition to identifying

them in the body of the amended complaint and shall state the basis for Mr. McClain's claims against each defendant. Mr. McClain shall only include claims raised on his own behalf and shall not include claims that are addressed in other lawsuits. Any amended complaint shall be a complete document that does not rely on the initial Complaint or other papers filed in this case or any other case to state a claim. When drafting his amended complaint, Mr. McClain should be mindful of the Court's reasons for dismissing the claims in his initial Complaint as explained in the Court's Memorandum. **If Mr. McClain files an amended complaint and intends to proceed on his deliberate indifference claim against Defendants Carter and Hawkins, then he must replead that claim, including all facts related to the claim.** Failure to do so will result in the claim being dropped from the lawsuit. In addition, given Mr. McClain's prior three strikes under the PLRA, Mr. McClain must demonstrate that any claim that he asserts is one for which he faces an imminent danger.

7. Upon the filing of an amended complaint, the Clerk shall not make service until I so order.

8. The Clerk of Court shall send Mr. McClain a blank copy of the Court's form complaint for a prisoner filing a civil rights action bearing the above civil action number. Mr. McClain may use this form to file his amended complaint if he chooses to do so.

9. If Mr. McClain does not wish to amend his Complaint and instead intends to stand on his Complaint as originally pled, then on or before February 16, 2024, he may

file a notice with the Court stating that intent. Any such notice should be titled "Notice to Stand on Complaint," and shall include the civil action number for this case. If Mr. McClain fails to file any response to this Order, I will conclude that he intends to stand on his Complaint.

BY THE COURT:

/s/ Joshua D. Wolson

JOSHUA D. WOLSON, J.